

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES HAMILTON)	
Claimant)	
VS.)	
)	Docket No. 220,728
AGRICULTURAL CARRIERS, INC.)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed from the September 12, 1997, Award by Administrative Law Judge John D. Clark. The Appeals Board heard oral argument on March 13, 1998, in Wichita, Kansas.

APPEARANCES

Claimant appeared by his attorney, Dennis L. Phelps of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Douglas D. Johnson of Wichita, Kansas.

RECORD

The record considered by the Appeals Board is the same as that set out in the Award by the Administrative Law Judge.

STIPULATIONS

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Administrative Law Judge found claimant entitled to a permanent partial disability compensation award based on a 53 percent work disability. Respondent disagrees with the Administrative Law Judge's finding as to the nature and extent of claimant's disability and contends the award should be limited to the claimant's percentage of functional impairment, or if a work disability is granted, then Dr. Brian M. Gross' task loss opinion should be averaged with Dr. Daniel C. Doornbos' opinion of no task loss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds that the findings and conclusions of the Administrative Law Judge, regarding the nature and extent of claimant's disability, are accurate and should be affirmed.

The Appeals Board agrees with and adopts the analysis of the evidence by the Administrative Law Judge concerning work disability. The 58 percent wage loss averaged with the 48 percent loss of ability to perform work tasks combine to equal a 53 percent work disability. The Appeals Board is mindful of the opinion by Dr. Doornbos to the effect that claimant has no loss of task performing ability. Nevertheless, the opinion of the treating physician, Dr. Gross, is found to be the more persuasive in this instance. Even Dr. Doornbos believed that claimant should be restricted from working around heavy concentrations of fumes, dusts, extremes of temperature and humidity, and other things that would be irritating to his airways. In addition, Dr. Doornbos' opinion of no task loss was qualified. Dr. Doornbos stated:

[Y]ou could conceive of areas and circumstances under which these jobs might pose a problem to him [claimant] So I would have to say there's -- I could see certain of these activities might, under certain circumstances, bother him, but there's nothing that I would say had to be absolutely prohibited at all costs given reasonable air quality and environmental conditions.

Respondent points to several factors showing a pattern of improvement in claimant's condition. Repeated pulmonary function testing revealed increasing capacity. Claimant eventually was able to obtain employment as a cook and there he was able to work around the grease smoke from the fryers without difficulty. Finally, Dr. Gross conceded that there was an argument for withholding judgment concerning permanency of an occupational asthma condition for at least two years. Nevertheless, opinions concerning the percentage of claimant's permanent impairment were given by both medical experts and the Appeals Board must make its findings based upon the record as it presently exists. It may be that claimant will show further improvement in the future. If so, review and modification of the Award is possible. Based upon the record as it currently stands, however, the Award by the Administrative Law Judge should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated September 12, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Douglas D. Johnson, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director